

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Jorge Almonte Ortega, Joel
Urena, Manuel Diaz-Minaya,
Odalys Berroa Hernandez, and
Victor Moreno, on behalf of
themselves and all other
persons similarly situated,

Plaintiffs,

-against-

Ernie's Auto Detailing Inc.,
Ernesto Decena, Bay Ridge
Automotive Management Corp.,
*and other entities controlled
by Bay Ridge Automotive
Management Corp.,*

Defendant.

Civil Case No.: 20-cv-3007
(BMC)

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**STIPULATION AND ORDER REGARDING CONDITIONAL CERTIFICATION,
ISSUANCE OF COLLECTIVE ACTION NOTICE AND DISCLOSURE OF CONTACT
INFORMATION**

Plaintiffs and Defendants, by and through their undersigned counsel, hereby stipulate and agree as follows upon the following premises:

WHEREAS Plaintiffs commenced this suit, purporting to bring claims under the Fair Labor Standards Act ("FLSA"), as a putative collective action, in the United States District Court for the Eastern District of New York; and,

WHEREAS Plaintiffs were employed by Defendant Ernie's Auto Detailing, Inc. ("Ernie's") as drivers and/or detailers assigned by Ernie's to, inter alia, locations owned and/or operated by Bay Ridge Automotive Management Corp. ("BRAM"), and seek to represent a collective action comprised of allegedly similarly situated employees under the FLSA; and

WHEREAS, in conformity with the Court's instructions counsel for Plaintiffs and counsel for the Defendant entered into negotiations regarding the scope of the collective action class; the appropriate form of notice to circulate to that class ("Notice"); and the appropriate information to be provided to Plaintiffs' counsel for purposes of disseminating the notice;

WHEREAS, the parties have reached an agreement regarding which employees are eligible to receive the Notice, the form and content of the Notice, and the manner in which the Notice will be distributed subject to the Court's approval;

WHEREAS, Defendants reserve all defenses and the right to object to the eligibility of any employee who files a consent form to remain a member of the collective action, including, but not limited to, reserving Defendants' right to move to decertify the collective action, Defendants' right to move to dismiss any opt-in based on circumstances relating such opt-in, and have stipulated only to Plaintiffs sending a Notice to such employees as set forth herein;

NOW THEREFORE IT IS STIPULATED AND AGREED AS FOLLOWS:

1. Notice shall be sent to all individuals who meet the following qualifications:

Any current or former non-exempt drivers and detailers of Ernie's who worked in New York on or after the date three years prior to October __, 2020 and worked more than forty (40) hours in at least one week during that period;

2. The individuals to whom Notice is sent shall be referred to as the "Collective Action members."

3. The Notice and Consent Form documents attached as Exhibit A will be sent to the Collective Action members by first class mail.

4. Within 21 days after Plaintiffs' receipt of the information described in Paragraph 7, Plaintiffs shall mail the approved Notice and Consent Form via First Class Mail, including a

Spanish translation (which Plaintiffs' counsel shall allow Defendants' counsel to review for accuracy of translation prior to dissemination).

5. Collective Action members shall have sixty (60) days from the date on which the Notice is mailed (the "Opt-in Period") to return the Consent form in the manner set forth in the Notice. Only individuals submitting a Consent form by the deadlines set forth herein shall be eligible to join the collective action in this matter unless Defendants consent otherwise, in writing, or Plaintiffs make an application to the Court demonstrating that good cause exists for accepting any untimely submission.

6. Consent forms shall be returned to Plaintiffs' counsel, who shall promptly file the same with the Clerk of the Court via ECF.

7. Within 14 business days after the Court has "So Ordered" this Stipulation, Ernie's shall provide Plaintiffs' counsel with a computer-readable list containing all Collective Action members' full names and last known mailing addresses on file with Ernie's. Plaintiffs' counsel may not use this information to make affirmative contact with potential class members (otherwise than by sending notice) absent further order of the Court. If Plaintiffs are unable to effectuate notice on some Collective Action members with the above information, or pursuant to the procedures described in Paragraph 8 below, the parties will meet and confer regarding proposed additional dissemination of notice beyond the notice contemplated herein. Absent agreement, Plaintiffs may make an application to the Court seeking approval to provide some form of additional notice to such individuals.

8. For notices that are mailed and returned undeliverable, within seven days after Plaintiffs' counsel has provided notification that such notice has been returned marked undeliverable, Defendants' counsel shall deliver to Plaintiffs' counsel the individual's last known

telephone number and email address as maintained by Ernie's corporate office. Plaintiffs' counsel then may call or email those individuals (for a maximum total of two outbound communications) solely for the purpose of obtaining a current mailing address to which the notice may be sent. If a forwarding address is supplied or discovered through such telephone or email communication, such individual shall have the longer of the Opt-In Period or 10 additional days from the date on which a second Notice is sent to return the Consent form.

9. Defendants reserve all rights to request decertification and preserve all defenses. Nothing herein should be construed as an agreement by Defendants to toll the statute of limitations for any Collective Action members, nor shall it be construed as an agreement or admission that conditional certification or class adjudication, in general, is appropriate or that Plaintiffs' claims are meritorious.

THE LAW OFFICE OF SAMUEL & STEIN
ATTORNEYS FOR PLAINTIFFS
38 West 32nd Street, Suite 1110.
New York, New York 10001
Tel.: (212) 563-9884

By: s/ David Stein
DAVID STEIN, ESQ.

Dated: 10/26/2020

FREEBORN & PETERS LLP
*ATTORNEYS FOR DEFENDANT BAY RIDGE
AUTOMOTIVE MANAGEMENT CORP.*
230 Park Avenue, Suite 630
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Tel.: (212) 218-8760

By: s/Kathryn T. Lundy
MARC B. ZIMMERMAN, ESQ.
KATHRYN T. LUNDY, ESQ.

Dated: ~~10/26/2020~~ 11/2/20

JACKSON LEWIS P.C.
*ATTORNEYS FOR DEFENDANTS ERNIE'S
AUTO DETAILING, INC. AND ERNESTO
DECENA*
58 South Service Rd., Ste. 250
Melville, New York 11747
Tel.: (631) 247-0404

By: s/ Noel P. Tripp
NOEL P. TRIPP, ESQ.
JAIME SANCHEZ, ESQ.

Dated: 10/26/2020

U.S.D.J.

4843-4977-4032, v. 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Jorge Almonte Ortega, Joel Urena, Manuel Diaz-Minaya, Odalis Berroa Hernandez, and Victor Moreno, on behalf of themselves and all other persons similarly situated,

Plaintiffs,

- vs. -

Ernie's Auto Detailing Inc., Ernesto Decena, Bay Ridge Automotive Management Corp., *and other entities controlled by Bay Ridge Automotive Management Corp.,*

Defendants.

DOCKET NO. 20-cv-3007
(BMC)

**NOTICE OF LAWSUIT AND
OPPORTUNITY TO JOIN**

This is not an attorney solicitation. This is a notice authorized by the United States District Court for the Eastern District of New York.

If you are or were a driver or detailer employed by Ernie's Auto Detailing Inc (hereinafter referred to as "Ernie's") in the state of New York, at any time since October __, 2020, worked overtime and were not paid proper overtime wages, please read this notice.

Important: You are NOT being sued.

Plaintiffs, who state that they were drivers and/or detailers for Ernie's, filed a lawsuit against the company on July 7, 2020, on behalf of themselves and all other similarly situated persons who worked for Ernie's in the last three years. They claim that Ernie's did not pay employees the overtime wages due to them.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
ASK TO BE INCLUDED	If you choose to be included in this collective action, you will be bound by any ruling, settlement or judgment in this case. You may also share in any proceeds from a settlement or judgment if those bringing the claims are successful. If you choose to be included you will give up any rights to separately sue Defendants about the same legal claims in this lawsuit.
DO NOTHING	By doing nothing, you will not be included in this lawsuit for the purpose of asserting overtime claims under federal law. This means that you give up the possibility of getting money or benefits that may come from a trial or settlement of the overtime claims under federal law asserted in this lawsuit, if those bringing the lawsuit are successful, but you will retain your legal rights to assert a claim in the future.

1. WHY DID I GET THIS NOTICE?

The purpose of this legal notice is to inform you that a lawsuit has been filed against Ernie's for, *inter alia*, unpaid overtime wages, and that you may be eligible to join the lawsuit.

This notice has been sent so that other individuals who may be "similarly situated" to the plaintiffs can become aware of their rights and join the lawsuit – or not – at their choice.

This notice advises you about how your rights may be affected by this lawsuit and how you may participate in this lawsuit, if you wish to do so and are eligible to do so.

2. WHAT IS THE LAWSUIT ABOUT?

Plaintiffs Jorge Almonte Ortega, Joel Urena, Manuel Diaz-Minaya, Odalis Berroa Hernandez, and Victor Moreno allege that Ernie's violated the Federal Fair Labor Standards Act and New York Labor Law by failing to them overtime compensation at the rate of time and one-half for all hours worked in excess of 40 hours in a week. Defendants disagree, and claim Ernie's properly paid its employees all wages they were owed. The lawsuit is in the discovery phase, and the Court has not made any rulings as to any of the parties' claims or defenses.

3. WHO MAY JOIN THE LAWSUIT?

If you are currently employed, or were employed since **[three years from the date of this notice]**, as a driver or detailer for Ernie's in the state of New York, worked overtime in that period and did not receive proper overtime wages, then you may be eligible to join this lawsuit. Joining this lawsuit does not mean that you necessarily are entitled to any money. The determination of whether you will be entitled to any money will be made by the judge.

You have a right to participate in this lawsuit even if you are undocumented or were paid in cash or off-the-books. You need not have paystubs or other records in order to participate.

4. HOW DO I JOIN?

If you fit within the definition of the eligible plaintiffs described above, you may join this lawsuit **in either of two ways**:

(1) You may join this lawsuit by completing and returning the attached ~~xxx~~ "Consent to Become Party Plaintiff" form to Plaintiffs' counsel at the address listed in Paragraph 5 below. The return envelope is pre-addressed and postage-paid for your convenience, or you may fax or scan and email your signed copy back. Should the enclosed Consent form be lost or misplaced, you may contact plaintiffs' counsel at the address listed in Paragraph 5 below.

The Consent form must be sent to plaintiffs' counsel in sufficient time to have plaintiffs' counsel file it with the Court on or **before [60 days from the date of notice]**.

-OR-

(2) You may also join the lawsuit by retaining another lawyer of your own choosing. If you do so, your chosen attorney must file an "opt-in" consent form with the Court on or **before [60 days from the date of notice]**. The address of the Court is:

U.S. District Court for the Eastern District of New York
Attn: Clerk of the Court
225 Cadman Plaza East

Brooklyn, New York 11201

The Clerk of the Court cannot give legal advice about this lawsuit. No phone calls to the Court are permitted concerning this lawsuit.

If you fail to file the “opt-in” consent form with the court or return the ~~KIX~~ “Consent to Become Party Plaintiff” form to Plaintiffs’ counsel on or before the above deadline, you may not be able to participate as a plaintiff in this lawsuit.

5. WHAT HAPPENS IF I JOIN?

If you choose to join in this lawsuit, you will be bound by the Judgment in this lawsuit, whether it is favorable or unfavorable to you.

If you join the lawsuit by signing and returning the ~~KIX~~ “Consent to Become Party Plaintiff” form, the lawyers for the plaintiffs will represent you. These lawyers are representing the plaintiffs on a contingency basis. They will not get paid unless they obtain money for you and the Plaintiffs. If there is a recovery, Plaintiffs’ lawyers will receive up to $\frac{1}{3}$ of any settlement obtained or money judgment obtained in favor of all plaintiffs. The amount they will get paid will be determined by the Court.

If you choose to join this suit, you may be represented by an attorney of your choosing, including Plaintiffs’ attorney:

David Stein
SAMUEL & STEIN
38 West 32nd Street, Suite 1110
New York, NY 10001
Telephone: (212) 563-9884
dstein@samuelandstein.com

If you retain another attorney of your own choosing, you will need to make arrangements as to payment directly with that attorney.

If you join this lawsuit, you may be asked to give sworn testimony at a deposition and/or trial and provide information about your work for Ernie’s to help the Court decide whether you are owed money. For that reason, you should save any documents you have relating to your job at Ernie’s.

6. AND IF I DO NOT JOIN?

If you do not wish to be part of the lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be part of the lawsuit in any way and will not be bound or affected by the result of the lawsuit (whether favorable or unfavorable).

If you decide not to join the lawsuit, you retain your right to bring a similar lawsuit on your own at a future time. However, claims under the Fair Labor Standards Act must be brought within 2 years of the date the claim accrues, unless the employer’s violation of the law is deemed to be “willful,” in which case the claim must be brought within 3 years.

7. NO RETALIATION PERMITTED

Federal and State law prevent anyone from retaliating against you based on your decision to either join or not join this lawsuit. Defendants are prevented from taking any action against you. Specifically, Defendants are prohibited from discharging you from your position of employment or in any other manner penalizing you or discriminating against you because you received this notice or join this lawsuit, or because you in any other way exercise your rights under the Fair Labor Standards Act.

8. COUNSEL FOR DEFENDANTS

The attorneys for Defendants in this case are:

For Ernie's:
Noel P. Tripp, Esq.
Jamie Sanchez, Esq.
Jackson Lewis P.C.
58 S. Service Road, Suite 250
Melville, NY 11747
(631) 247-0404
Noel.Tripp@jacksonlewis.com

For Bay Ridge Automotive
Management Corp.:
Marc B. Zimmerman
Kathryn T. Lundy
Freeborn & Peters LLP
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New York, NY 10169
(212) 218-8760
mzimmerman@freeborn.com

9. FURTHER INFORMATION

Additional information can be obtained from the lawyers listed in Paragraphs 5 and 8. You may also examine the Court file in this case, in person, at the U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201. You may also view the case file via the Internet, for a fee, using the Court's PACER service. Go to www.pacer.psc.uscourts.gov for more information.

Other than in-person requests to examine the file at the Clerk's Office, no inquiries concerning this case should be directed to the Court or to the Clerk of the Court.

DATED: October __, 2020

**THE COURT TAKES NO POSITION IN THIS CASE REGARDING THE MERITS OF
PLAINTIFFS' CLAIMS OR OF DEFENDANTS' DEFENSES.**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Jorge Almonte Ortega, Joel Urena, Manuel Diaz-Minaya, Odalis Berroa Hernandez, and Victor Moreno, on behalf of themselves and all other persons similarly situated,

Plaintiffs,

- vs. -

Ernie's Auto Detailing Inc., Ernesto Decena, Bay Ridge Automotive Management Corp., and other entities controlled by Bay Ridge Automotive Management Corp.,

Defendants.

DOCKET NO. 20-cv-3007
(BMC)

**CONSENT TO JOIN COLLECTIVE
ACTION AND BECOME A PARTY
PLAINTIFF**

By my signature below, I consent to join the collective action styled *Ortega et al. v. Ernie's Auto Detailing Inc., et al.*, Eastern District of New York Case Number 20-cv-3007, and authorize the prosecution of all aspects of the above-styled wage and hour action in my name and on my behalf by the named Plaintiffs listed above and their counsel, acting as my agent to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation and all other matters pertaining to this lawsuit. By joining, I understand that I will bound by any adjudication of this action by a court, whether it is favorable or unfavorable, and by any settlement of this action. I understand that I will be represented by Samuel & Stein without prepayment of costs or attorneys' fees. I understand that my attorneys may petition the Court for an award of fees and costs to be paid by the defendants on my behalf. I understand that the fees retained by the attorneys will be the amount received from the defendants for those fees or approximately $\frac{1}{3}$ of the total settlement or judgment (including fees), whichever is greater, or such other amount as approved by the Court.

Printed Name	Signature	Date Signed
Street Address, including Apt.	City, State, Zip Code	Email address
Telephone	Job title/Position	Approximate Start and End Dates of Employment

PLEASE FILL OUT THIS FORM AND RETURN IT IN THE ENCLOSED ENVELOPE IN TIME FOR FILING WITH THE COURT BY **[60 days]** to:

ERNIE'S AUTO DETAILING COLLECTIVE ACTION
C/O SAMUEL & STEIN
38 West 32nd Street, Suite 1110
New York, NY 10001

If your address or telephone number changes after you have submitted this form, please notify SAMUEL & STEIN immediately at 212-563-9884 or dstein@samuelandstein.com.

YOU CAN ALSO FAX THIS FORM TO **212-563-9870** OR SCAN AND EMAIL IT TO **dstein@samuelandstein.com**

If your address or telephone number changes after you have submitted this form, please notify
SAMUEL & STEIN immediately at 212-563-9884 or dstein@samuelandstein.com.